

## REMARKS

The present Amendment responds to the Office Action dated July 10, 2006. The Examiner set a shortened statutory period for reply of three (3) months, making the present Amendment due by March 10, 2006.

In the Office Action, claims 1-17 were pending, with claims 13-16 withdrawn from consideration per Applicants' election in response to Restriction Requirement mailed March 23, 2006. At the outset, the Examiner observed that claims 5-12 were in improper multiple dependent form and objected to the claims under 35 USC §1.75(c). The Examiner will note that Applicants have now amended claims 5-10 and 12 so that each claim properly depends only from claim 1. Applicants also appreciate the Examiner's meticulous review of the current specification and claims, noting the existence of various spelling errors. Applicants request that they be permitted to attend to any and all appropriate spelling corrections if and when the Examiner indicates that the claims contain allowable subject matter. At such time, Applicants will endeavor to make all necessary amendments.

More substantively, the Examiner has rejected claims 1-12 and 17 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 24 of US Patent No. 6,710,092 to Scher et al. The Examiner also rejected examined claims 1-4 and 17 under 35 U.S.C. 102(a), taking the position that the claims are anticipated by US Patent No. 6,407,196 to Shen et al.

With respect to the nonstatutory obviousness-type double patenting rejection, the Examiner stated "the species of the wall-forming material in the conflicting patent claim anticipates the claimed unspecified wall-forming material in the claims of the herein application, and a patent to the application here would therefore extend the rights of the wall-forming material species should the unspecified wall-forming wall material issue as a patent after the species." With respect to the wall forming material, claim 24 of the Scher et al. patent includes the limitation that "the wall forming

material is a urea formaldehyde prepolymer in which the methylol ( $--CH_2OH$ ) groups have optionally been partially etherified by reaction with a  $C_4-C_{10}$  alkanol." In effort to address the double patenting rejection, Applicants have now amended claim 1 to include that the proviso that wall forming material "is not a urea formaldehyde." Applicants believe that amending claim 1 in this way addresses the Examiner's concerns in this regard and particularly to clarify that claim 24 of the Scher et al. reference does not anticipate Applicants' claimed invention.

Turning then to the remaining § 102(a) rejection of the claims, Applicants respectfully disagree that the Shen et al. reference anticipates the present invention because it does not teach each and every element of claim 1. Particularly, the Shen et al. reference does not teach an emulsion that includes a surfactant layer formed by the reaction of wall-forming moieties of a microcapsule wall-forming material with an interface modifying compound. Rather, Shen et al. teach emulsifiable polyisocyanate derived adducts, which the Examiner appears to equate to the surfactant layer of the present invention. A closer review of the Shen et al. disclosure shows that these emulsifiable adducts are actually the contents of emulsion droplets and do not constitute a surfactant layer around a droplet. In support of Applicants' position, the Examiner's attention is directed to column 6, lines 34-36 wherein Shen et al. teach "[t]he reaction end-point is achieved when no isocyanate functionality remains in the resulting polyisocyanate derived adduct". Accordingly, it is impossible for the emulsifiable polyisocyanate derived adducts to participate in a reaction according to the present invention to produce a surfactant layer around an emulsion droplet.

In view of the foregoing, the Shen et al. reference cannot anticipate claim 1 since the reference is missing an element of the claim, namely, the surfactant layer formed by the reaction of wall-forming moieties of a microcapsule wall-forming material with an interface modifying compound. As such claim 1, as well as, claims 2-12 and 17 depending therefrom are believed to

be in condition for allowance. Notwithstanding the above, Applicants further submit that Shen et al. cannot anticipate claim 17 because the reference does not teach reactive isocyanate wall forming material.

Based upon the foregoing then, Applicants submit that the examined and pending claims 1-12 and 17 are in condition for allowance and the Examiner is courteously solicited to pass this application on to allowance. No other fees are believed to be payable at this time. However, the Commissioner is authorized to debit any applicable fees from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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